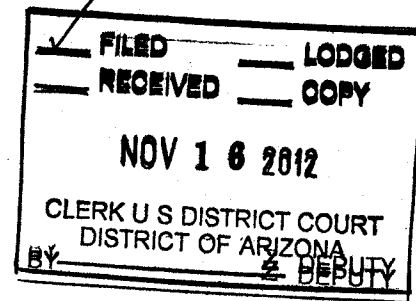


Marvin Randall  
PO Box 28087  
Tempe, AZ 85285  
Phone: (480) 382-8130  
Email: marvinrandall@gmail.com



UNITED STATES DISTRICT COURT,  
DISTRICT OF ARIZONA

CV-12-02468-PHX-NVW

Marvin Randall,

Plaintiff,

vs.

Progressive Financial Services, Inc.,

Defendant

Case No.:

**COMPLAINT AND DEMAND FOR JURY TRIAL**  
**(Unlawful Debt Collection Practices, Violation of the Telephone Consumer Protection Act)**

**PLAINTIFF'S COMPLAINT**

Marvin Randall (hereafter "Plaintiff"), alleges the following against PROGRESSIVE FINANCIAL SERVICES, INC. (hereafter "Defendant"):

**INTRODUCTION**

1. Count I on the Plaintiff's Complaint is based on violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 USC 1692 et seq.
2. Count II on the Plaintiff's Complaint is based on violation of the Telephone Consumer Protection Act ("TCPA"), 47 USC 227 et seq.

**JURISDICTION AND VENUE**

3. Jurisdiction of this court arises pursuant to 15 USC 1681p, which states that such actions may be brought and heard before "any appropriate United States District Court without regard to the amount in controversy."

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

- 1 4. Defendant, PROGRESSIVE FINANCIAL SERVICES, INC. is registered to do business
- 2 in the state of Arizona, and therefore, personal jurisdiction is established.
- 3 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
- 4 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

#### 5 **PARTIES**

- 6 7. Plaintiff is a natural person residing in the city of Tempe, in Maricopa County, AZ.
- 7 8. Plaintiff is a consumer as defined by 15 USC 1692a(d).
- 8 9. Defendant is a Pennsylvania corporation with headquarters in Tempe, AZ.
- 9 10. Defendant is a debt collector as defined in the Fair Debt Collection Practices Act
- 10 ("FDCPA"), 15 USC 1692a(6).
- 11 11. Defendant acted through its agents, employees, officers, members, directors, heirs,
- 12 successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
- 13

#### 14 **FACTUAL ALLEGATIONS**

- 15 12. On November 18, 2011, Plaintiff received a communication in the form of a phone call
- 16 from phone number 888-441-5024 ("First Call"). Plaintiff did not recognize the number
- 17 and did not answer the call.
- 18 13. A few moments later, Plaintiff noticed that the caller left a voice mail.
- 19 14. Plaintiff performed an internet search and learned that the phone number belonged to
- 20 Defendant.
- 21 15. Upon further research, the Plaintiff ascertained the Defendant is a debt collector.
- 22 16. Plaintiff retrieved his voice mail and heard a pre-recorded message left by the Defendant.
- 23 17. The purpose of the call was to induce the Plaintiff to call the Defendant.
- 24 18. Plaintiff was and remains unaware of any debt claimed due to the Defendant or its clients.
- 25 19. The Defendant did not have prior express consent to call and leave such messages on the
- 26 Plaintiff's cellular phone.
- 27
- 28

1 20. On November 21, 2011, Plaintiff received a communication in the form of a phone call  
2 from phone number 888-441-5024 ("Second Call").

3 21. After a few moments, Plaintiff noticed that there was another voice mail message left.

4 22. Plaintiff retrieved his voice mail and heard a pre-recorded message left by the Defendant.

5 23. The Defendant did not have prior express consent to call and leave such messages on the  
6 Plaintiff's cellular phone.

7 24. On November 22, 2011, Plaintiff received a communication in the form of a phone  
8 Plaintiff received a communication in the form of a phone call from phone number 888-  
9 441-5024 ("Third Call").

10 25. Plaintiff retrieved his voice mail and heard a pre-recorded message left by the Defendant.

11 26. The Defendant did not have prior express consent to call and leave such messages on the  
12 Plaintiff's cellular phone.

13 27. In reviewing the voice mail messages left after each call, the pre-recorded voice does not  
14 identify that the caller is a debt collector.

15 28. Each voice mail left is considered a communication under the FDCPA.

16 29. After each call, Plaintiff suffered emotional distress and harassment due to the  
17 Defendant's phone calls and voice mails.

18 30. Defendant failed to send a dunning letter within 5 days after the initial communication  
19 occurring on November 18, 2011, as required under 15 USC 1692g(a).

20 31. The Defendant did not have prior express consent, or implied consent to call and leave  
21 such messages on the Plaintiff's cellular phone.

22 32. According to the Defendant's website, they utilize automated dialers in contacting  
23 alleged debtors.

24 33. The use of automated dialers to leave pre-recorded, non-emergency voice mails on a  
25 cellular phone are a violation of the TCPA.  
26  
27  
28

**COUNT I**

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

34. Defendant violated the Fair Debt Collection Practices Act in the following ways:

- a) By delivering a pre-recorded message without providing meaningful disclosure that the caller was a debt collector, in violation of 15 USC 1692e;
- b) By failing to send an initial dunning letter within 5 days of initial communication, in violation of 15 USC 1692g(a);
- c) By using of unfair means to collect a debt, specifically, the violation of other consumer protection laws, in violation of 15 USC 1682f.

**COUNT II**

**DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

35. Defendant violated the Telephone Consumer Protection Act in the following ways:

- a) In placing the First Call using an automatic dialing device to deliver a pre-recorded telephone message to elicit a return phone call regarding an alleged debt to Plaintiff's cellular phone, without having Plaintiff's prior express consent, Defendant willfully violated 47 U.S.C. §227(b)(1)(B) and 47 C.F.R. §64.1200(a)(2).
- b) In placing the Second Call using an automatic dialing device to deliver a pre-recorded telephone message to elicit a return phone call regarding an alleged debt to Plaintiff's cellular phone, without having Plaintiff's prior express consent, Defendant willfully violated 47 U.S.C. §227(b)(1)(B) and 47 C.F.R. §64.1200(a)(2).
- c) In placing the Third Call using an automatic dialing device to deliver a pre-recorded telephone message to elicit a return phone call regarding an alleged debt to Plaintiff's cellular phone, without having Plaintiff's prior express

consent, Defendant willfully violated 47 U.S.C. §227(b)(1)(B) and 47 C.F.R.  
§64.1200(a)(2).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Marvin Randall, respectfully requests judgment be entered  
against the Defendant, PROGRESSIVE FINANCIAL MANAGEMENT INC, for the following:

AS TO COUNT I

36. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection  
Practices Act;
37. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15  
USC 1692k.

AS TO COUNT II

38. Declaratory judgment that Defendant's conduct violated the Telephone Consumer  
Protection Act;
39. Statutory damages in the amount of \$500.00 per phone call, pursuant to the Telephone  
Consumer Protection Act, 47 USC 227;
40. A finding that each phone call made to the Plaintiff are subject to treble damages,  
pursuant to 47 USC 227(b)(1)(B).

AS TO ALL COUNTS

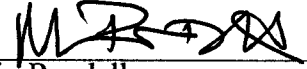
41. Actual damages;
42. Costs pursuant to the Fair Debt Collection Practices Act, 15 USC 1692k;
43. Any other relief the Honorable Court deem just and appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to the Seventh Amendment of the United States Constitution, Plaintiff, Marvin  
Randall, demands a jury trial in this cause of action.

///

Dated this 9<sup>th</sup> day of November, 2012



Marvin Randall

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL